Filed 5/16/07 Chatman v. YMCA of Metropolitan Los Angeles CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| VALERIE CHATMAN,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>YMCA OF METROPOLITAN LOS ANGELES,<br><br>Defendant and Respondent. | B187981<br><br>(Los Angeles County Super. Ct. No. BC319032) |

APPEAL from an order and judgment of the Superior Court of Los Angeles County. Ernest M. Hiroshige, Judge. Affirmed.

Valerie Chatman, in pro. per., for Plaintiff and Appellant.

McCune & Harber, Louis E. Marino, Jr., and Jessica O. Gillette for Defendant and Respondent.

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Appellant Valerie Chatman (Chatman) initiated this lawsuit against respondent YMCA of Metropolitan Los Angeles (YMCA) after the YMCA notified her that it was terminating her from one of its programs, including asking her to leave its living space. The trial court granted the YMCA's motion for summary adjudication, and then, on its own motion, entered judgment on the pleadings in favor of the YMCA. Chatman appeals, asking us to reverse the trial court judgment and remand the matter for a jury trial.

We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

*Factual Background*

"A Brighter Future" program was created by a grant agreement between the Housing Urban Development (HUD) and the YMCA. The program permits single mothers with no more than two children and single women with no children who are eligible to receive public assistance if not employed to obtain, upon completion of the two-year program, Section 8 status entitling them to subsidized housing for the remainder of their lives.

The women reside in two separate single dwelling units. The first dwelling, contained on the fourth floor, is exclusively for women with children. Women with no children reside on the third floor, which consists of approximately 14 dormitory style rooms with a common kitchen and two common bathrooms that the women share.

On July 18, 2002, Chatman, a single woman with no children, entered into a probationary contract with the YMCA to move into the third floor dwelling. With respect to the probationary period, the contract provides, in relevant part: "**During this 135-day period from your [Chatman's] move in date, we reserve the right to immediately terminate your place in the program if we feel this is not an appropriate living situation for you or you are not able to reach your short term goals such as employment or educational training within your probationary period**. Please be aware, a previous verbal warning or written warning is not necessary for us to take action."

Six days later, on July 24, 2002, the YMCA evicted Chatman from the program.

*Procedural Background*

Chatman initiated this lawsuit against the YMCA on July 26, 2004. Later, on January 7, 2005, Chatman filed her lengthy, handwritten first amended complaint. The pleading sets forth four causes of action: violation of Government Code section 12955, subdivisions (a), (c), and (d), breach of contract, negligent infliction of emotional distress, and intentional infliction of emotional distress. In the first cause of action, Chatman alleges that Government Code section 12955, subdivision (c), prohibits age discrimination and that she suffered age discrimination. She seeks an order from the trial court declaring that the YMCA discriminated against her because of her age. No other allegations of discrimination are pled.

The YMCA answered on May 12, 2005.

On July 1, 2005, the YMCA filed its motion for summary adjudication of issues. It sought summary adjudication of the first (violation of Gov. Code, § 12955) and second (breach of contract) causes of action. Chatman opposed the YMCA's motion. In so doing, she did not file a responsive separate statement, as required by Code of Civil Procedure section 437c, subdivision (b)(3).[1]

On September 21, 2005, the trial court granted the YMCA's motion for summary adjudication.

On December 1, 2005, the parties appeared for the jury trial on Chatman's remaining causes of action (intentional and negligent infliction of emotional distress). On its own motion, the trial court granted a motion for judgment on the pleadings on those remaining causes of action. It reasoned that Chatman had no theory upon which to proceed in light of the trial court's prior order granting the YMCA's motion for summary adjudication.

Judgment was entered. Chatman then timely filed a notice of appeal.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

## DISCUSSION

I. *Infirmities with Chatman's Appeal*

Preliminarily, we must address the countless infirmities in Chatman's appeal. Her opening brief is largely unintelligible. Even a cursory review of the opening brief reveals that it does not provide us with the basic information we need to determine what is being challenged by Chatman, such as the orders from which she is appealing. As another court observed in describing a similarly inadequate brief, "[i]ndeed, this document is strongly reminiscent of those magazine puzzles of yesteryear where the reader was challenged to 'guess what is wrong with this picture.'" (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 280.)

"'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' [Citation.] [¶] It is the duty of [appellant], not of the courts, 'by argument and the citation of authorities to show that the claimed error exists.' [Citation.]" (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) To the extent that the issues as raised in Chatman's opening brief are not properly presented or sufficiently developed to be cognizable, we decline to consider them and treat them as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19; *In re David L.* (1991) 234 Cal.App.3d 1655, 1661.) Nor does appellant's election to act as her own attorney on appeal entitle her to any leniency as to the rules of practice and procedure; otherwise, ignorance unjustly is rewarded. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985; *Lombardi v. Citizens Nat. Trust Etc. Bank* (1955) 137 Cal.App.2d 206, 208–209.)

Keeping the foregoing in mind, we turn to the merits of Chatman's appeal.

II. *The YMCA's Motion for Summary Adjudication*[2]

A. Standard of Review

We review a trial court's order granting summary judgment or summary adjudication de novo. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

In applying this standard of review, we reiterate the well-established rule that the operative complaint frames the issues for summary judgment. (*B.L.M. v. Sabo & Deitsch* (1997) 55 Cal.App.4th 823, 834.) After reviewing Chatman's first amended complaint, it appears that her first cause of action is based solely upon a claim for age discrimination. It follows that we need resolve only the age discrimination claim Chatman asserted against the YMCA. However, given that the parties presumed that her cause of action was based upon theories of age, sex, and familial status discrimination, we address those theories in our opinion as well.

B. The Trial Court Properly Granted the YMCA's Motion for Summary Adjudication of Chatman's Claims Asserted under Government Code section 12955

First, the trial court properly determined that the YMCA was entitled to judgment on Chatman's age discrimination claim. Government Code section 12955, subdivision (a) provides: "It shall be unlawful: [¶] (a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of

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[2] Although the YMCA does not raise this point in its brief, we note that it is questionable whether we have jurisdiction to review the merits of the trial court's order granting the YMCA's motion for summary adjudication. It is well-established that: "'Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from.' [Citation.]" (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) A notice of appeal that unambiguously designates a specific judgment or order from which the appeal has been taken is limited to that judgment or order. (See *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46.) Chatman's notice of appeal refers only to the trial court's order granting judgment on the pleadings to YMCA. Nevertheless, we liberally construe Chatman's notice of appeal (Cal. Rules of Court, rule 8.100(a)(2)), and we deem it to encompass the order granting the YMCA's motion for summary adjudication.

income, or disability of that person." The statute does not bar age discrimination, and Chatman has provided us with no legal authority to support her proposition that this statute in fact prohibits age discrimination. As such, Chatman cannot pursue a claim for age discrimination pursuant to Government Code section 12955, subdivision (a). (See, e.g., *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 487 ["[O]ur task is to ascertain the intent of the Legislature so as to effectuate the purpose of the enactment. [Citation.] We look first to the words of the statute, which are the most reliable indications of the Legislature's intent. [Citation.]"].)

Second, the trial court properly determined that the YMCA was entitled to judgment on Chatman's claim for familial status discrimination. It is undisputed that the YMCA program admits both women with and without children. As such, there was no discrimination as a matter of law.

Regardless, the familial status protection found in Government Code section 12955.2, subdivision (a) specifically provides that it protects persons who were discriminated against because they have children. The statute provides: "For purposes of this part, 'familial status' means one or more individuals under 18 years of age who reside with a parent, another person with care and legal custody of that individual, a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children, or the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian. The protections afforded by this part against discrimination on the basis of familial status also apply to any individual who is pregnant, who is in the process of securing legal custody of any individual under 18 years of age, or who is in the process of being given care and custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children." The statute's plain language does not provide protection to persons who did not have children.

Our conclusion is bolstered by legislative history. Government Code section 12955.2 was enacted "to protect individuals rights and provide remedies . . . substantially similar to those rights and remedies provided for in the [F]ederal Fair Housing Amendments Act of 1988." (Stats. 1992, ch. 182, § 24 (S.B. 1234).) And, Congress added "familial status" to the Federal Fair Housing Amendments Act out of "a concern that housing opportunities were not sufficiently available to persons with children." (*Gibson v. County of Riverside* (C.D. Cal. 2002) 181 F.Supp.2d 1057, 1075.) In other words, both the federal government and the state government acted out of a concern for persons with children, not persons, such as Chatman, without children.

It follows that Chatman cannot state a claim for familial status discrimination against the YMCA.

Third, to the extent Chatman attempts to state a claim for sex discrimination, her efforts fail. It is well established, that in order to state a cause of action, the plaintiff must be an "aggrieved person," defined by Government Code section 12927, subdivision (g) as "any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur." The YMCA admits only women; Chatman is a woman. As such, she is not an "aggrieved person" and lacks standing to pursue a cause of action for sex discrimination.

Moreover, Government Code section 12927, subdivision (c)(2)(B) expressly provides that the term "discrimination" does not include sex discrimination "[w]here the sharing of living areas in a single dwelling unit is involved, the use or words stating or tending to imply that the housing being advertised is available only to persons of one sex." It is undisputed that the "A Brighter Future" program provides housing that includes the sharing of living areas, with common restrooms and a kitchen. Consequently, the program's restriction to women does not constitute discrimination.

In light of the foregoing conclusions, to the extent Chatman alleges discriminatory advertising pursuant to Government Code section 12955, subdivision (c), her claim fails as a matter of law. That statute provides: "It shall be unlawful: . . . [¶] (c) For any person to make, print, or publish, or cause to be made, printed or published, any notice,

statement or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability or an intention to make that preference, limitation, or discrimination." In addition to the absence of evidence of discriminatory conduct, there is no evidence that the YMCA engaged in any discriminatory advertising. It follows that the YMCA is entitled to summary adjudication of this theory of liability as well.

For the same reasons, Chatman's claims asserted under Government Code section 12955, subdivision (d) fail. That statute provides: "It shall be unlawful: . . . [¶] (d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, source of income, or on any other basis prohibited by that section." Aside from the fact that Chatman presents no evidence of any sort of discrimination, she cannot proceed against the YMCA pursuant to this statutory subdivision because the YMCA is not a business establishment. (See Civ. Code, § 51, subd. (b); *Curran v. Mount Diablo Council of Boy Scouts* (1998) 17 Cal.4th 670, 699–700.) Accordingly, the Unruh Act does not apply.

C. The Trial Court Properly Granted the YMCA's Motion for Summary Adjudication of Chatman's Breach of Contract Cause of Action

Chatman alleges that the YMCA breached its probationary contract with her.

The probationary contract provides: "**During this 135-day period from your [Chatman's] move in date, we reserve the right to immediately terminate your place in the program if we feel this is not an appropriate living situation for you or you are not able to reach your short term goals such as employment or educational training within your probationary period.** Please be aware, a previous verbal warning or written warning is not necessary for us to take action."

Chatman signed the probationary contract on July 18, 2002, and moved into the living quarters. Pursuant to the contract's terms, on July 24, 2002, the YMCA notified Chatman that it was terminating her tenancy because the YMCA program did not meet Chatman's needs. Given that the termination of her tenancy was within the scope of the parties' agreement, the YMCA did not breach the contract as a matter of law.

III. *The Trial Court's Motion for Judgment on the Pleadings*

A. Standard of Review

A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to state facts sufficient to constitute a cause of action. (§ 438, subd. (c)(1)(B)(ii).) Because a motion for judgment on the pleadings is equivalent to a demurrer, a ruling on such a motion is governed by the same standard of review. (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) "All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law; judicially noticeable matters may be considered. [Citations.]" (*Ibid*.) "'[W]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]' [Citation.]" (*Kabehie v. Zoland* (2002) 102 Cal.App.4th 513, 519.) Because the "defect of substance is not waived by failure to demur and may be raised at any time on trial or appeal . . . , the motion may be made without previously demurring, and an order overruling a general demurrer does not preclude granting the motion at trial." (5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 954, p. 411.)

The trial court may grant a motion for judgment on the pleadings on its own motion. (§ 438, subd. (b)(2).)

B. The Trial Court Properly Granted Judgment on the Pleadings to the YMCA

Chatman's emotional distress causes of action were entirely dependent upon her discrimination and breach of contract causes of action. Once the trial court granted summary adjudication to the YMCA on those causes of action, Chatman had no grounds to proceed on her emotional distress claims. Accordingly, it properly awarded judgment on the pleadings to the YMCA.

## DISPOSITION

The order and judgment of the trial court are affirmed. The YMCA is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD